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ADDRESS

OF

L. MADISON DAY,

DELIVERED AT ODD FELLOWS' HALL,

New Orleans, October 12th, 1860.

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L. MADISON DAY,

ON

The Union, The Constitution,

AND THE

ENFORCEMENT OF THE LAWS,

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New Orleans, October 12th, 1860.

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ADDRESS.

Mr. President and Fellow Citizens:

I could have wished that the pleasing duty of addressing you on this occasion had devolved on another—one who, by the power of his reasoning, the beauty of his diction, and the charm of his eloquence, would reap golden and ever blooming laurels in the noble and patriotic cause in which you are engaged—one who could roll away the misty vapors of sectional discord from the loftiest peaks of our mountains and open up to view the pleasing and enchanting prospect of one whole and common country smiling beneath the glorious influence of "the Union, the Constitution, and the Enforcement of the Laws."

In the performance, however, of the duty assigned me, you must not expect an ambitious parade, an ostentatious display, a gaudy exhibition, or a wandering o'er arid fields in fancied flights to cull a flower, to collect a gem, or to embellish and adorn—for the cause of truth and justice, like beauty, needs not the aid of fiction and ornament, for it stands upon its own merits and the primary interest of society, and "deriving its effulgent light from the radiations of Heaven."

In all ages of the world leagues and governments have been formed for the best and for the worst of purposes. And in proportion to the virtue and intelligence, or the baseness and depravity of those who formed and composed them, have they been blessings of inestimable value, in ameliorating and improving the moral, the

social and the political condition of their fellow-men, or have exerted a deleterious and corrupting influence upon social and civilized society. And as the eye careers along the vista of the past and sweeps o'er the present, it beholds no form of government more pleasing to the eye, more fascinating to the understanding, or more grateful to the soul than that bequeathed to us by our patriotic and illustrious sires. But, unhappily, the night and gloom of sectional agitation which now o'ershadows the land, has marred the beauty and impaired the glory of our free government, and now threatens all with more than Cimmerian darkness.

And why, fellow citizens, this agitation—this night and gloom that now overshadows the land? Need I tell you, fellow-citizens, that it is an idle and a useless agitation of the subject of slavery? Need I tell you, in the recent language of a portion of the Democracy of Humphreys county, in the State of Tennessee, that it is a question "of little practical importance" at the present time? Fellow-citizens, this agitation, as I now believe, is of little practical importance. All our rights, under the Constitution, are more secure without it. All our rights, in a practical point of view, are more safe without than with this agitation. Every man of experience and judgment knows that wherever soil, climate and productions invite, there slavery will go; and all know that where such is not the case, no power can force it where it is not profitable. It is, therefore, a matter that will regulate itself, and needs no law to restrain or expand it.

Prohibitory laws will not and cannot prevent its penetration into those regions where it will be profitable. Nor on the other hand can fostering laws plant or establish it in uncongenial climes. If the people want it

they will have it. But on the contrary if they do not want it they will not have it, and they will not countenance it when they come to form their Constitution. Now, fellow-citizens, it seems to me that these views ought to be sufficient to allay all agitation and excitement on this subject. But if there be those who entertain a different opinion, let them look to "the Union, the Constitution and the Enforcement of the Laws" for the security of all their sacred rights.

Beneath the glorious flag of the Union, the shield of the Constitution, and the sword of the execution of the laws, every Constitutional right is secure.

The constitutionality of every law of Congress is subject to the decision of the Supreme Court of the United States. If unconstitutional, they are void and have no force or effect whatever, and any one attempting to execute the same would be considered a trespasser.

Hence, if Congress should ever pass any law on the subject of slavery, its constitutionality is subject to be determined and settled by the Supreme Court of the U. S., whose decision would be final and conclusive on all parties. Here, then, is the great source of our safety. And here too, is the great bulwark, under the Constitution, by which the angry waves of sectional agitation and unconstitutional legislation are broken, and thrown back *peacefully* to the broad bosom of the ocean from whence they came. We should, then, one and all, turn a deaf ear to the Syren song of secession, which is but another name for *Revolution* and disunion.

Secession and revolution is no remedy for any evils of unconstitutional legislation. But it would do more, in my judgment, to accelerate the extinction of slavery than anything that could possibly occur.

For by secession and revolution, it would be limited and forever confined within its present boundaries.

England, France and Spain would never consent to, or allow of its expansion beyond its present limits.

And after having inaugurated the consequences of secession and revolution, even if successful, no aid against the interference of those powers could be looked for from those with whom we had dissolved our social and political connections.

It is, therefore, wise for us to adhere to our blood bought Union, and bequeathed to us by the patriotic fathers of the Revolution.

And as the proud Eagle, the bird of Jove, springs aloft and soars away among the stars and looks with an undazzled eye upon the sun, so does the importance of "the Union, the Constitution, and the Enforcement of the Laws," rise superior to, and soar far, far away above all other social and political considerations.

It is to the Union, the Constitution and the Enforcement of the Laws that we must look for all our peace, prosperity and happiness at home, and for all our dignity and respect abroad. The Constitution was the *voluntary* act of the *whole people* in their sovereign capacity as freemen, and is alike binding and obligatory upon *all*—the whole people of the United States—until they shall see fit to supersede or change the same in the mode and manner pointed out in the Constitution, which was formed for the wisest and for the best of purposes. These noble purposes, as well as the sublime and omnipotent authority from which they emanated, are all clearly and unmistakably set forth in the preamble to the Constitution, as follows:

"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and

establish this Constitution for the United States of America."

Such the mighty and holy origin, and such the magnificent and sublime objects for which the Union was formed and from which the Constitution sprung. It was baptized with the patriotic blood of our illustrious sires, and consecrated with the tears, privations, trials and sufferings of the patriotic mothers and daughters of the Revolution.

To promote the general welfare, to secure the blessings of liberty to themselves and their posterity the glorious battles of the Revolution were fought by our ancestors, and the Union and the Constitution, guaranteeing the blessings of liberty, were designed to be immortal.

In no event then can or is it to be supposed that any one or more of the parties to the Union and the Constitution should be at liberty or have the right and power to disregard the one or violate the other.

Neither the States nor the people can change the Constitution and the laws made in pursuance thereof, except in the mode and manner pointed out in the Constitution, and which, as has been well said, "is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it."

It is, therefore, clear that the stability of the Constitution and the permanency of the Union was not designed to depend upon or to be altered, destroyed, or disregarded at the mere will and pleasure of any part or portion of the people less than a legal and constitutional majority.

No State, nor any part or portion of the people of the United States less than the whole, have the right either to violate the Constitution and the laws made in pursuance thereof, or to secede from the Union.

The sovereignty of the United States is not in any State, or in any part or portion of the people less than the whole. It resides not in the States, but in the great body of the whole people of the United States. Every freeman in this country constitutes a portion of the sovereignty of the same. In this country all are freemen (without subjects) and are entitled to freemen's rights. And the great foundation upon which these rights repose are the Union, the Constitution, and the Enforcement of the Laws. It would, therefore, seem to be a self-evident proposition, that no State or States, nor any part or portion of the people, can disregard the one or violate the other at their mere will and pleasure.

The correctness of these views (if indeed it is possible for any one to entertain a doubt on the subject) is further evinced from the fact that the sovereignty of the nation is in the *whole people of the United States*, and not in the States or in any subdivisions of them.

In the case of Chisholm's Executors *vs.* the State of Georgia, 2 Dallas R. 445 (3 Cond. R. 72,) Mr. Justice Wilson, of the Supreme Court of the United States, after avowing his disapprobation of the purposes for which the terms State and sovereignty are frequently used and of the object to which the application of the term sovereignty is almost universally made, and by way of evincing the meaning of the terms State and sovereignty and the application which he made of the latter, said :

"In doing this, I shall have occasion incidentally to evince how true it is that States and governments were made for man ; and at the same time how true it is that his creatures and servants have first deceived, next vilified, and at last oppressed their masters and maker.

Man, "fearfully and wonderfully made," is the work-

manship of his All-Perfect Creator. A State, useful and valuable as the contrivance is, is the inferior contrivance of man; and from his native dignity derives all its acquired importance. When I speak of a State as an inferior contrivance, I mean that it is a contrivance inferior only to that which is divine. Of all human contrivances, it is certainly most transcendantly excellent. It is concerning this contrivance that Cicero says so sublimely: 'Nothing which is exhibited upon our globe is more acceptable to that divinity which governs the whole universe, than those communities and assemblages of men which, lawfully associated, are denominated States.'

Let a State be considered as subordinate to the people; but let everything else be subordinate to the State. The latter part of this position is equally necessary with the former. For in the practice, and even at length in the science of politics, there has been a strong current against the natural order of things, and an inconsiderate or an interested disposition to sacrifice the end to the means. As the State has claimed precedence of the people, so, in the inverted course of things, the Government has often claimed precedence of the State; and to this perversion in the second degree, many of the volumes of confusion concerning sovereignty owe their existence.

The ministers, dignified very properly by the appellation of magistrates, have wished, and have succeeded in their wish, to be considered as the sovereigns of the State. This second degree of perversion is confined to the old world, and begins to diminish even there; but the first degree is still too prevalent, even in the several States of which this Union is composed. By a State I mean a complete body of free persons, united together

for their common benefit, to enjoy peaceably what is their own, and to do justice to others.

The only reason, I believe, why a free man is bound by human laws is that he binds himself. Upon the same principles upon which he becomes bound by the laws he becomes amenable to the courts of justice, which are formed and authorized by those laws. If one free man, an original sovereign, may do all this, why may not an aggregate of freemen, a collection of original sovereigns, do this likewise? If the dignity of each singly is undiminished, the dignity of all jointly must be unimpaired.

Who, or what is sovereignty? What is his or its sovereignty? On this subject the errors and mazes are endless and inexplicable. To enumerate all, therefore, will not be expected; to take notice of some will be necessary to the full illustration of the present important cause. In one sense the term *sovereign* has for its correlative, *subject*. In this sense, the term can receive no application; for it has no object in the Constitution of the United States. Under that Constitution there are citizens, but no subjects. 'Citizens of the United States.' (Art. 1, sec. 2.) 'Citizens of another State.' 'Citizens of different States.' 'A State or citizen thereof.' (Art. 3, sec. 3.) The term *subject* occurs, indeed, once in the instrument; but to mark the contrast strongly, the epithet 'foreign' (Ib.) is prefixed.

As a citizen, I know the government of that State to be republican; and my definition of such a government is, one constructed on this principle: that the supreme power resides in the body of the people. As a Judge of this Court, I know and can decide upon the knowledge that the citizens of Georgia, when they acted up the large scale of the Union, as a part of the people of

the United States, did not surrender the supreme or sovereign power to that State; but, as to the purposes of the Union, retained it to themselves As to the purposes of the Union, therefore, Georgia is not a sovereign State."

And this same learned Judge, in further explaining why the pretensions set up that Georgia was a sovereign State was not true in point of fact, and in tracing and explaining the sense in which the term "sovereign" is frequently used, says: "In this sense, sovereignty is derived from a feudal source; and like many parts of that system so degrading to man, still retains its influence over our sentiments and conduct, though the cause by which that influence was produced never extended to the American States. The accurate and well informed President Henault, in his excellent chronological abridgment of the History of France, tells us that about the end of the second race of kings, a new kind of possession was acquired under the name of fief.

The governors of cities and provinces usurped equally the property of land and the administration of justice, and established themselves as proprietory seigniories over those places in which they had been only civil magistrates or military officers. By this means there was introduced into the State a new kind of authority, to which was assigned the appellation of sovereignty. In process of time the feudal system was extended over France and almost all the other nations of Europe. And every kingdom became, in fact, a large fief. Into England this system was introduced by the Conqueror, and to this era we may probably refer the English maxim, 'that the King, or Sovereign, is the fountain of justice.'

Even in almost every nation which has been denomi-

nated free, the State has assumed a supercilious pre-eminence above the people who have formed it; hence, the haughty notions of State independence, State sovereignty and State supremacy. In despotic governments the government has usurped in a similar manner, both upon the State and the people; hence, all arbitrary doctrines and pretensions concerning the supreme, absolute and uncontrollable power of the government. In each, man is degraded from the prime rank which he ought to hold in human affairs; in the latter, the State as well as the man is degraded. Of both degradations, striking instances occur in history, in politics, and in common life.

In the United States, and in the several States which compose the Union, we go not so far; but still we go one step farther than we ought to go in this unnatural and inverted order of things. The States, rather than the people, for whose sakes the States exist, are frequently the objects which attract and arrest our principal attention. This, I believe, has produced much of the confusion and perplexity which has appeared in several proceedings and several publications on State politics, and on the politics, too, of the United States.

A State, I cheerfully admit, is the noblest work of man; but man himself, free and honest, is—I speak as to this world—the noblest work of God.

Concerning the prerogative of Kings, and concerning the sovereignty of States, much has been said and written; but little has been said and written concerning a subject much more dignified and important—the majesty of the people. The mode of expression which I would substitute in the place of that generally used, is not only politically but also (for between true liberty and

true taste there is a close alliance) classically more correct.

On the mention of Athens a thousand refined and endearing associations rush at once into the memory of the scholar, the philosopher and the patriot. When Homer, one of the most correct as well as one of the oldest of human authorities, enumerates the other nations of Greece whose forces acted at the siege of Troy, he arranges them under the names of their different kings or princes; but when he comes to the Athenians he distinguishes them by the peculiar appellation of the people of Athens. The well-known address used by Demosthenes when he harangued and animated his assembled countrymen was, "O, men of Athens." With the strictest propriety, therefore, classical and political, our national scene opens with the most magnificent object which the nation could present. "The people of the United States" are the first personages introduced. Who are those people? They were the citizens of thirteen States, each of which had a separate Constitution and government, and all of which were connected together by articles of confederation. To the purposes of public strength and felicity that confederacy was totally inadequate. A requisition on the several States terminated its authority; executive or judicial authority it had none.

In order, therefore, to form a more perfect union, to establish justice, to insure domestic tranquility, to provide for the common defence, and to secure the blessing of liberty, those people, among whom were the people of Georgia, ordained and established the present Constitution. By that Constitution, legislative power is vested, executive power is vested, judicial power is vested.

The question now opens fairly to our view: Could the people of those States, among whom were those of Georgia, bind those States, and Georgia among the others, by the legislative, executive and judicial power so vested? If the principles on which I have founded myself are just and true, this question must unavoidably receive an affirmative answer. If those States are the work of those people, those people—and that I may apply the case closely, the people of Georgia in particular—could alter, as they pleased, their former work to any given degree; they could diminish as well as enlarge it. Any or all of the former State powers they could extinguish or transfer. The inference which necessarily results is, that the Constitution, ordained and established by those people—and still closely to apply the case, in particular by the people of Georgia—could vest jurisdiction or judicial power over those States, and over the State of Georgia in particular." See also 3 Cond. R. 68.

So in Marbury *vs.* Madison, 1 Cranch's R., 137; (1 Cond. R., 283) Chief Justice Marshall, who, "like that great luminary of light, extinguishes in a flood of refulgence the twinkling splendor of every inferior planet," has well and admirably said, "That the people have an original right to establish for their future government such principles as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, so established are deemed fundamental; and as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent."

Again, in the great case of Cohens *vs.* Virginia, 6 Wheat. R., 380, 382, Chief Justice Marshall says: "The American States, as well as the American people, have believed a close and firm Union to be essential to their liberty and to their happiness. They have been taught by experience that this Union cannot exist without a government for the whole; and they have been taught by the same experience that this Government would be a mere shadow that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent States. Under the influence of this opinion, and thus instructed by experience, the American people, in the conventions of their respective States, adopted the present Constitution.

If it could be doubted whether from its nature it were not supreme in all cases where it is empowered to act, that doubt would be removed by the declaration, that 'this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby; anything in the Constitution or laws of any State to the contrary notwithstanding.' This is the authoritive language of the American people; and, if gentlemen please, of the American States. It marks, with lines too strong to be mistaken, the characteristic distinction between the Government of the Union and those of the States.

The General Government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution; and if there be any who deny its necessity, none can deny its authority.

To this Supreme Government ample powers are confided, and if it were possible to doubt the great purposes for which they were so confided, the people of the United States have declared that they are given 'in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity.'

With the ample powers confided to this Supreme Government for these interesting purposes are connected many express and important limitations on the sovereignty of the States, which are made for the same purposes. The powers of the Union on the great subjects of war, peace and commerce, and many others, are in themselves limitations of the sovereignty of the States; but in addition to these, the sovereignty of the States is surrendered in many instances where the surrender can only operate to the benefit of the people, and where, perhaps, no other power is conferred on Congress than a conservative power to maintain the principles established in the Constitution. The maintenance of these principles in their purity is certainly among the great duties of the Government. One of the instruments by which this duty may be peaceably performed is the judicial department; it is authorized to decide all cases of every description, arising under the Constitution or laws of the United States."

And after adverting and commenting at length upon the dangers of collision likely to arise from State legislation, State action, and the decision of the State Courts, unless the supremacy of the Union and the Constitution should be maintained and upheld through the judicial department of the Union, this eminent jurist, at page 387 of this same case, says: "These collisions may

take place in times of no extraordinary commotion. But a Constitution is framed for ages to come, and is designed to approach immortality as nearly as human institutions can approach it. Its course cannot always be tranquil. It is exposed to storms and tempests, and its framers must be unwise statesmen indeed if they have not provided it, as far as its nature will permit, with the means of self-preservation from the perils it may be destined to encounter. No Government ought to be so defective in its organization as not to contain within itself the means of securing the execution of its own laws against other dangers than those which occur every day. Courts of justice are the means usually employed; and it is reasonable to expect that a Government should repose on its own Courts rather than on others."

And in the case of Martin *vs.* Hunter's Lessee, 1 Wheat, R. 342–3, 346–7, 348, Mr. Justice Story, in giving the opinion of the Supreme Court of the United States in relation to the supremacy of the Union, the Constitution, and the decisions of the Judiciary of the Union, says: "It has been argued that such an appellate jurisdiction over State Courts is inconsistent with the genius of our Government and the spirit of the Constitution. That the latter was never designed to act upon State sovereignties, but only on the people, and that if the power exists, it will materially impair the sovereignty of the States and the independence of their Courts. We cannot yield to the force of this reasoning; it assumes principles which we cannot admit, and draws conclusions to which we do not yield our assent.

It is a mistake that the Constitution was not designed to operate upon States in their corporate capacities. It is crowded with provisions which restrain or annul the

sovereignty of the States in some of the highest branches of their prerogatives. The tenth section of the first article contains a long list of disabilities and prohibitions imposed upon the States. Surely when such essential portions of State sovereignty are taken away, or prohibited to be exercised, it cannot be correctly asserted that the Constitution does not act upon States. The language of the Constitution is also imperative upon the States as to the performance of many duties. It is imperative upon the State legislatures to make laws prescribing the time, places and manner of holding elections for Senators and Representatives, and for electors of President and Vice-President. And in these, as well as some other cases, Congress has a right to revise, amend or supercede the laws which may be passed by State Legislatures. When, therefore, the States are stripped of some of the highest attributes of sovereignty, and the same are given to the United States; when the Legislatures of the States are, in some respects, under the control of Congress, and in every case are, under the Constitution, bound by the paramount authority of the United States, it is certainly difficult to support the argument that the appellate power over the decisions of State Courts is contrary to the genius of our institutions.

The Courts of the United States can, without question, revise the proceedings of the Executive and Legislative authorities of the States, and if they are found to be contrary to the Constitution, may declare them to be of no legal validity. Surely the exercise of the same right over judicial tribunals is not a higher or more dangerous act of sovereign power.

Nor can such a right be deemed to impair the independence of State Judges. It is assuming the very ground in controversy to assert that they possess an

absolute independence of the United States. In respect to the powers granted to the United States, they are not independent; they are expressly bound to obedience by the letter of the Constitution; and if they should unintentionally transcend their authority, or misconstrue the Constitution, there is no more reason for giving their judgments an absolute and irresistible force, than for giving it to the acts of the other co-ordinate departments of State sovereignty.

It is manifest that the Constitution has proceeded upon a theory of its own, and given or withheld powers according to the judgment of the American people, by whom it was adopted. We can only construe its powers, and cannot inquire into the policy or principles which induced the grant of them. The Constitution has presumed (whether rightfully or wrongfully we do not inquire) that State attachments, State prejudices, State jealousies, and State interests, might sometimes obstruct or control, or be supposed to obstruct or control the regular administration of justice."

And after enumerating the many cases in which parties have the right to have legal controversies heard in the national courts, as well as the "necessity of uniformity of decisions throughout the whole United States upon all subjects within the purview of the Constitution," this same eminent jurist and scholar says: "There is an additional consideration, which is entitled to great weight. The Constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes."

And in the great case of Cohens v. Virginia, 6 Wheat. R. 414, (and from which we have already so freely quoted) Chief Justice Marshall holds this emphatic lan-

guage: "America has chosen te be, in many respects, and to many purposes, a nation; and for all these purposes her government is complete. The people have declared that in the exercise of all powers given for these objects it is supreme. It can then, in effecting these objects, legitimately control all individuals or governments within the American territory. The Constitution and laws of a State, so far as they are repugnant to the Constitution and laws of the United States, are absolutely void. These States are constituent parts of the United States. They are members of one great Empire—for some purposes sovereign, for some purposes subordinate."

So, in the cases of Ableman v. Booth, and United States v. Booth, 21 How. R. 516, the present Supreme Court of the United States, through Chief Justice Taney, says: "And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State Judge or a State Court as if the line of division was traced by landmarks and monuments visible to the eye.

But, as we have already said, questions of this kind must always depend upon the Constitution and laws of the United States and not of a State. The Constitution was not formed merely to guard the States against danger from foreign nations, but mainly to secure harmony

at home; for if this object could be attained, there would be but little danger from abroad; and to accomplish this purpose, it was felt by the statesmen who framed the Constitution and by the people who adopted it, that it was necessary that many of the rights of sovereignty which the States then possessed should be ceded to the General Government, and that, in the sphere of action assigned to it, it should be supreme, and strong enough to execute its own laws by its own tribunals, without interruption from a State or from State authorities. And it was evident that anything short of this would be inadequate to the main object for which the Government was established, and that local interests, local passions or prejudices, incited and fostered by individuals for sinister purposes, would lead to acts of aggression and injustice by one State upon the rights of another, which would ultimately terminate in violence and force, unless there was a common arbiter between them armed with power enough te protect and guard the rights of all by appropriate laws, to be carried into execution peacefully by its judicial tribunals.

The language of the Constitution, by which this power is granted, is too plain to admit of doubt or to need comment. It declares that this Constitution, and the laws of the United States which shall be passed in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby; anything in the Constitution or laws of any State to the contrary notwithstanding.

But the supremacy thus conferred on this Government could not peacefully be maintained unless it was clothed with judicial power equally paramount in authority to carry it into execution; for if left to the Courts

of Justice of the several States, conflicting decisions would unavoidably take place, and the local tribunals could hardly be expected to be always free from the influences of which we have spoken. And the Constitution and laws and treaties of the United States and the powers granted to the Federal Government, would soon receive different interpretations in different States, and the Government of the United States would soon become one thing in one State and another thing in another. It was essential, therefore, to its very existence as a Government that it should have the power of establishing Courts of Justice, altogether independent of State power, to carry into effect its own laws; and that a tribunal should be established in which all cases which might arise under the Constitution and laws and treaties of the United States, whether in a State Court or a Court of the United States, should be finally and conclusively decided. Without such a tribunal it is obvious that there would be no uniformity of judicial decision: and that the supremacy (which is but another name for independence) so carefully provided in the clause of the Constitution above referred to, could not possibly be maintained peacefully unless it was associated with this paramount judicial authority.

The importance which the framers of the Constitution attached to such a tribunal, for the purpose of preserving internal tranquility, is strikingly manifested by the clause which gives this Court jurisdiction over the sovereign States which compose this Union, when a controversy arises between them. Instead of reserving the right to seek redress for injustice from another State by their sovereign powers, they have bound themselves to submit to the decision of this Court, and to abide by its judgment. And it is not out of place to say here

that experience has demonstrated that this power was not unwisely surrendered by the States; for in the time that has already elapsed since this Government came into existence, several irritating and angry controversies have taken place between adjoining States in relation to their respective boundaries, and which have sometimes threatened to end in force and violence, but for the power vested in this Court to hear them and decide between them.

This judicial power was justly regarded as indispensible, not merely to maintain the supremacy of the laws of the United States, but also to guard the States from any encroachment upon these reserved rights by the General Government. And as the Constitution is the fundamental and supreme law, if it appears that an act of Congress is not pursuant to and within the limits of the power assigned to the Federal Government, it is the duty of the Courts of the United States to declare it unconstitutional and void. The grant of judicial power is not confined to the administration of laws passed in pursuance to the provisions of the Constitution, nor confined to the interpretations of such laws; but by the very terms of the grant the Constitution is under their view where any act of Congress is brought before them, and it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress. And as the final appellate power in all such questions is given to this Court, controversies as to the respective powers of the United States and the States, instead of being determined by military and physical force, are heard, investigated, and finally settled with the calmness and deliberation of judicial inquiry. And no one can fail to see, that if such an arbiter had not been provided, in

our complicated system of government, internal tranquility could not have been preserved; and if such controversies were left to arbitrament of physical force, our Government, State and National, would cease to be governments of laws, and revolutions by force of arms would take the place of Courts of Justice and judicial decisions.

In organizing such a tribunal, it is evident that every precaution was taken which human wisdom could devise, to fit it for the high duty with which it was entrusted. It was not left to Congress to create it by law, for the States could hardly be expected to confide in the impartiality of a tribunal created exclusively by the General Government without any participation on their part. And as the performance of its duty would sometimes come in conflict with individual ambition or interests and powerful political combinations, an act of Congress establishing such a tribunal might be repealed in order to establish another more subservient to the predominant political influences or excited passions of the day. This tribunal, therefore, was erected, and the powers of which we have spoken, conferred upon it, not by the Federal Government, but by the people of the States, who found and adopted that Government and conferred upon it all the powers, legislative, executive, and judicial, which it now possesses. And in order to secure its independence, and enable it faithfully and firmly to perform its duty, it engrafted it upon the Constitution itself, and declared that this Court should have appellate power in all cases arising under the Constitution and laws of the United States. So long, therefore, as this Constitution shall endure, this tribunal must exist with it, deciding in the peaceful forms of judicial proceeding the angry and irritating controversies between sovereignties, which, in

other countries, have been determined by the arbitrament of force."

In the case of Cohens *vs.* Virginia, 6 Wheat. R. 389, Chief Justiee Marshall, in delivering the unanimous opinion of the Supreme Court of the United States, holds this emphatic and explicit language: "The people made the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will. But this supreme and irresistible power to make or to unmake resides only in the whole body of the people; not in any sub-division of them. The attempt of any of the parts to exercise it is usurpation, and ought to be repelled by those to whom the people have delegated their power of repelling it."

So in Ableman *vs.* Booth, 21 How. R. 523–4, (which was a case growing out of resistance to the execution of the fugitive slave law in Wisconsin,) Chief Justice Taney, in giving the unanimous opinion of the Court, says:

"And although, as we have said, it is the duty of the Marshal, or other person holding him, to make known, by a proper return, the authority under which he detains him, it is at the same time imperatively his duty to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other government. And consequently it is his duty not to take the prisoner, nor suffer him to be taken, before a State Judge or Court upon a *habeas corpus* issued under State authority. No State Judge or Court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or require him to be brought before them.

And if the authority of a State, in the form of judicial

process or otherwise, should attempt to control the Marshal or other authorized officer or agent of the United States, in any respect, in the custody of his prisoner, it would be his duty to resist it, and to call to his aid any force that might be necessary to maintain the authority of the law against illegal interference. No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the Court or Judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence."

These decisions of the highest Court known to the Constitution and the law, show too clearly to leave any room for doubt, that no State nor any one by its authority has any right to oppose or interfere with the authority and due execution of the laws of the United States.

And if any or all the citizens of a State oppose with force, or there is an assemblage to oppose by force the authority or execution of any Constitutional law of the United States, all those who perform any part, however minute or however remote from the scene of action, and who are actually leagued in the conspiracy, are guilty of *Treason*. Ex parte Bollman et al., 4 Cranch R., 75, per Chief Justice Marshall.

The third section of Article three of the Constitution of the United States declares that "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

When this section defining Treason was before the Convention which framed the Constitution, Luther Martin, of Maryland, a distinguished member of that Convention, proposed the following as an amendment: "Provided that no act or acts done by one or more of

the States against the United States, or by a citizen of any one of the United States, shall be deemed treason or punished as such; but in case of war being levied by one or more States against the United States, the conduct of each party toward the other, and their adherents respectively, shall be regulated by the laws of war and of nations."

Even had this proposed amendment been adopted, there would have been no foundation for the assumed right of peaceable secession. On the contrary, it would only have avoided the *penalty of Treason*. Each and every one opposing with force the authority of the General Government would still be liable to be treated according to the laws of nations and the rules of war.

But this amendment of Mr. Martin's was voted down in a very decided manner, and the above section, declaring it treason to levy war against the United States, or to adhere to their enemies, giving them aid and comfort, was adopted after a full discussion, and on mature deliberation.

All opposition, then, by force, as well as all banding together with an assembling to oppose with force the authority of the United States, or to prevent the execution of any law of the United States, is *Treason*, and punishable with *death*.

How idle, then, to talk of a right of peaceable secession! And how culpable to attempt to deceive the people by holding out such false lights, to mislead and deceive. The Government can only be changed in accordance with the requirements of the Constitution, or by Revolution and force of arms.

When the Constitution was submitted to the Convention in New York for ratification, it was proposed to

ratify it conditionally, but this proposition was voted down.

In July 1788 Mr. Madison, in reply to Mr. Hamilton on the subject of a conditional ratification and the right of a State to withdraw, says:

"The Constitution requires an adoption *in toto* and forever. It has been so adopted by the other States. An adoption for a limited time would be as defective as an adoption of some of the articles only. In short, any condition whatever must vitiate the ratification." * *

"The idea of reserving the right towithdraw was started at Richmond, and considered as a conditional ratification, which was itself abandoned as worse than rejection."

Here, then, we have the authority of Mr. Madison, the great author of the Constitution, that the Constitution was not only designed and intended to be adopted unqualifiedly and *forever*, but that it was so understood at the time by those who adopted it. It was also well understood, as fully appears from the above language of Mr. Madison, that no State had the right to withdraw after an adoption of the Constitution.

In 1832, when South Carolina claimed the right of secession, and threatened to defy the authority of the laws of the United States, that statesman and patriot, General Jackson, in his justly celebrated proclamation of that year, in speaking of the question as to the right of secession, well says: "Every man of plain, unsophisticated understanding, who hears the question, will give such an answer as will preserve the Union. Metaphysical subtlety, in pursuit of an impracticable theory, could alone have devised one that is calculated to destroy it.

I consider, then, the power to annul a law of the

United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed."

And to vindicate the correctness of the above views of Gen. Jackson, (if, indeed, any vindication is necessary) let us refer to the language of the Supreme Court of the United States, in a case which was decided in 1858.

In the case of Ableman v. Booth, (21 How. R. 524-5) that enlightened Court, through Chief Justice Taney, unanimously says:

"Nor is there anything in this supremacy of the General Government or the jurisdiction of its judicial tribunals to awaken the jealousy or offend the natural and just pride of State sovereignty. Neither this Government nor the powers of which we are speaking were forced upon the States. The Constitution of the United States, with all the powers conferred by it on the General Government and surrendered by the States, deliberately done for their own protection and safety against injustice from one another, and their anxiety to preserve it in full force, in all its powers, and to guard against resistance to or evasion of its authority on the part of a State, is proved by the clause which requires that the members of the State Legislatures and all Executive and Judicial officers of the sovereign States (as well as those of the General Government) shall be bound, by oath or affirmation, to support this Constitution. This is the last and closing clause of the Constitution, and inserted when the whole frame of Government, with the powers hereinbefore specified, had been adopted by

the Convention; and it was in that form, and with these powers, that the Constitution was submitted to the people of the several States for their consideration and decision.

Now, it certainly can be no humiliation to the citizen of a republic to yield a ready obedience to the laws as administered by the constituted authorities. On the contrary, it is among his first and highest duties as a citizen, because free government cannot exist without it. Nor can it be inconsistent with the dignity of a sovereign State to observe faithfully, and in the spirit of sincerity and truth, the compact into which it voluntarily entered when it became a State of this Union. On the contrary, the highest honor of sovereignty is untarnished faith. And certainly no faith could be more deliberately and solemnly pledged than that which every State has plighted to the other States to support the Constitution as it is, in all its provisions, until they shall be altered in the manner which the Constitution itself prescribes. In the emphatic language of the pledge required, it is to support this Constitution. And no power is more clearly conferred by the Constitution and laws of the United States than the power of this Court to decide, ultimately and finally, all cases arising under such Constitution and laws; and for that purpose to bring here for revision, by writ of error, the judgment of a State Court, where such questions have arisen, and the right claimed under them denied by the highest judicial tribunal in the State."

And, besides, to this emphatic exposition by the Supreme Court of the duty of the States to adhere to and obey the authority of the United States, Section ten, of the Constitution, Article one, among other prohibitions, says: "No State shall enter into any treaty, alliance or

confederation, etc." "No State shall, without the consent of Congress, lay any duty of tonage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, etc."

How then can any State or States enter into any compact or agreement with another State without violating both the letter and the spirit of the Constitution? How raise troops or keep ships of war without also violating the sacred compact? By the Constitution the President is required to take the following oath before he enters upon the discharge of the duties of his office: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve. protect and defend the Constitution of the United States." The Constitution further provides as follows: "He shall take care that the laws be faithfully executed, etc." (Article 1, Sec. 3).

With such an overwhelming weight of the highest judicial authority known to the Union and the Constitution, all the pretensions put forth in the different quarters of the nation of any right in any part or portion of the people of any State or States to disregard or violate at their will and pleasure any clause of the Constitution or any principle of the sacred compact of the Union, or to violate any law made in pursuance of the Constitution, must be dissipated and vanish in thin air beneath the glorious light of the principles of the Union, the Constitution and the Enforcement of the Laws, as expounded by the Supreme Court of the United States.

Nor is this to be deemed a hardship in any respect whatsoever. For, as is well said by Chief Justice Marshall, in the case of Marbury v. Madison, 1 Cranch, 137, (1 Cond. R. 284): "It is emphatically the province and

duty of the judicial department to say what the law is."

And in a previous part of this same case (1 Cond. R. 275) it is well said by the Court: "The Government of the United States has been emphatically termed a Government of laws, and not of men."

It is to this sovereign panoply of the Union, the Constitution and the law, then, that we would invite one and all to rally.

Beneath the broad and ample folds of the flag of the Union, the Constitution and the Enforcement of the Laws, all, all will find repose and full and complete protection for all their Constitutional rights.

And besides, let us ever remember, as has been well and beautifully said, that;

> "A thousand years scarce serve to build a State--
> An hour may lay it in the dust; and when
> Can man its shatter'd splendor renovate,
> Recall its virtues back and vanquish time and fate."

Let every one, then, who is a true patriot and friend of the Union say with the god-like Webster when advocating before the Senate the Compromise measures of 1850 (and which gave peace, repose and quiet to the country): "I shall stand by the Union and all who stand by it. I shall do justice to the whole country, according to the best of my ability in all I say, and act for the good of the whole in all I do. I mean to stand upon the Constitution. I need no other platform. I shall know but one country. The ends I aim at shall be my Country's, my God's and Truth's."

Let us, too, cherish and exclaim, with the dying but glorious Clay: "I may be asked, as I have been, when I would consent to a dissolution of the Union. I answer, Never! Never! Never!"

And let us cherish with more than filial affection the following patriotic advice from the Farewell Address of the Father of his Country:

"The unity of the Government which constitutes you one people, is also now dear to you It is justly so; for it is a main pillar in the edifice of your real independence, the support of your tranquility at home, your peace abroad, of your safety, of your prosperity, of that very liberty which you so highly prize. But as it is easy to foresee that from different causes, and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth—as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly (though often covertly and insiduously) directed—it is of infinite moment that you should properly estimate the immense value of your national Union to your collective and individual happiness; that you should cherish a cordial, habitual and immovable attachment to it, accustoming yourselves to think and to speak of it as a palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts."

Of this fatherly advice let us also cherish and forever remember what that great patriot, General Jackson, says:

"The lessons contained in this invaluable legacy of Washington to his countrymen should be cherished in the heart of every citizen to the latest generation; and, perhaps, at no period of time could they be more usefully remembered than at the present moment. For

when we look upon the scenes that are passing around us, and dwell upon the pages of his parting address, his paternal counsels would seem to be not merely the offspring of wisdom and foresight, but the voice of prophecy foretelling events and warning us of the evil to come."

Let us remember, too, that General Jackson has said:

"If the UNION is once SEVERED, the line of separation will grow WIDER and WIDER, and the controversies which are now debated and settled in the halls of legislation, will then be TRIED IN FIELDS OF BATTLE, and determined by the sword."

Let us one and all, too, exclaim to the patriots of our opponents:

"*Leave your friends and stand by your COUNTRY!*"

"*The Union: IT MUST AND SHALL BE PRESERVED!*"

And, finally, let every true patriot's voice be heard, and let the combined shout, "like the mingling of many winds, roll on undying to freedom's farthest mountain," saying in one joyous and harmonious strain to the Union,

"Long shall it live and every blast defy,
'Till Time's last whirlwind sweep the vaulted sky."